

ASSEMBLY BILL

No. 1229

Introduced by Assembly Member Evans

February 27, 2009

An act to amend Section 20101 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as introduced, Evans. Public contracts: local public agencies: prospective bidders.

(1) Existing law authorizes, with a specified exception, a public entity subject to specified laws governing public contracting by local agencies to require that each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works.

This bill would, instead, require that the above-referenced questionnaire and financial statement be in a form prepared and provided to the public entity by the Contractors State License Board.

(2) Existing law requires the Department of Industrial Relations, in collaboration with affected agencies and interested parties, to develop model guidelines for rating bidders, and to draft the standardized questionnaire that may be used by public entities for purposes of laws regulating local public works projects, and requires the department, in developing the standardized questionnaire, to consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties.

This bill would, instead, require the Contractors State License Board, in collaboration with affected agencies and interested parties, to develop

guidelines for qualifying bidders, and prepare the standardized questionnaire that shall be used by public entities for purposes of laws regulating local public works projects, and would require the Contractors State License Board, in developing or revising the standardized questionnaire, to consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties.

(3) Existing law requires any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described, and to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, and specifies that the uniform system of rating prospective bidders shall be based on objective criteria.

This bill would require any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described, and to adopt and apply a uniform system of qualifying bidders on the basis of the completed questionnaires and financial statements, and would require that the uniform system of qualifying prospective bidders be based on objective criteria, and take into account factors including, but not limited to, the size and contract volume of a prospective bidder so as to equally apply qualifying factors on a weighted basis.

(4) Existing law authorizes a public entity to establish a process for prequalifying prospective bidders on a quarterly basis, and provides that a prequalification pursuant to this process shall be valid for one calendar year following the date of the initial qualification.

This bill would require that the prequalification pursuant to this process be valid for 3 calendar years following the date of initial prequalification if the public agency determines that the information in the prequalifying questionnaire has not substantially changed during the 3-year period. By imposing new duties on local agencies with respect to the process for qualifying bidders, the bill would impose a state-mandated local program.

The bill would also require the Contractors State License Board to develop and maintain a database of contractors and subcontractors that are qualified to bid on a public works projects that may be accessed by public entities subject to the above public contracting requirements.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20101 of the Public Contract Code is
2 amended to read:
3 20101. (a) Except as provided in Section 20111.5, a public
4 entity subject to this part may require that each prospective bidder
5 for a contract complete and submit to the entity a standardized
6 questionnaire and financial statement in a form ~~specified by the~~
7 ~~entity prepared and provided to the public entity by the Contractors~~
8 ~~State License Board~~, including a complete statement of the
9 prospective bidder's experience in performing public works. The
10 standardized questionnaire may not require prospective bidders to
11 disclose any violations of Chapter 1 (commencing with Section
12 1720) of Part 7 of Division 2 of the Labor Code committed prior
13 to January 1, 1998, if a violation was based on a subcontractor's
14 failure to comply with these provisions and the bidder had no
15 knowledge of the subcontractor's violations. ~~The Department of~~
16 ~~Industrial Relations Contractors State License Board~~, in
17 collaboration with affected agencies and interested parties, shall
18 develop ~~model~~ guidelines for ~~rating~~ *qualifying* bidders, and ~~draft~~
19 ~~prepare~~ the standardized questionnaire, that ~~may~~ *shall* be used by
20 public entities for the purposes of this part. ~~The Department of~~
21 ~~Industrial Relations Contractors State License Board~~, in developing
22 *or revising* the standardized questionnaire, shall consult with
23 affected public agencies, cities and counties, the construction
24 industry, the surety industry, and other interested parties. The
25 questionnaire and financial statement shall be verified under oath
26 by the bidder in the manner in which civil pleadings in civil actions
27 are verified. The questionnaires and financial statements shall not
28 be public records and shall not be open to public inspection;
29 ~~however,~~ *except that* records of the names of contractors applying
30 for prequalification status shall be public records subject to

1 disclosure under Chapter 3.5 (commencing with Section 6250) of
2 Division 7 of Title 1 of the Government Code.

3 (b) Any public entity requiring prospective bidders to complete
4 and submit questionnaires and financial statements, as described
5 in subdivision (a), shall adopt and apply a uniform system of ~~rating~~
6 *qualifying* bidders on the basis of the completed questionnaires
7 and financial statements, in order to determine both the minimum
8 requirements permitted for qualification to bid, and the type and
9 size of the contracts upon which each bidder shall be deemed
10 qualified to bid. The uniform system of ~~rating~~ *qualifying*
11 prospective bidders shall be based on objective criteria, *and shall*
12 *take into account factors including, but not limited to, the size and*
13 *contract volume of a prospective bidder, so as to equally apply*
14 *factors used to determine the qualifications of a bidder on a*
15 *weighted basis.*

16 (c) A public entity may establish a process for prequalifying
17 prospective bidders pursuant to this section on a quarterly basis
18 and a prequalification pursuant to this process shall be valid for
19 ~~one calendar year~~ *three calendar years* following the date of initial
20 prequalification *if the public entity determines that the information*
21 *in the prequalifying questionnaire has not substantially changed*
22 *during the three-year period of time.*

23 (d) Any public entity requiring prospective bidders on a public
24 works project to prequalify pursuant to this section shall establish
25 a process that will allow prospective bidders to dispute their
26 proposed prequalification rating prior to the closing time for receipt
27 of bids. The appeal process shall include the following:

28 (1) Upon request of the prospective bidder, the public entity
29 shall provide notification to the prospective bidder in writing of
30 the basis for the prospective bidder's disqualification and any
31 supporting evidence that has been received from others or adduced
32 as a result of an investigation by the public entity.

33 (2) The prospective bidder shall be given the opportunity to
34 rebut any evidence used as a basis for disqualification and to
35 present evidence to the public entity as to why the prospective
36 bidder should be found qualified.

37 (3) If the prospective bidder chooses not to avail itself of this
38 process, the proposed prequalification rating may be adopted
39 without further proceedings.

1 (e) For the purposes of subdivision (a), a financial statement
2 shall not be required from a contractor who has qualified as a Small
3 Business Administration entity pursuant to paragraph (1) of
4 subdivision (d) of Section 14837 of the Government Code, when
5 the bid is no more than 25 percent of the qualifying amount
6 provided in paragraph (1) of subdivision (d) of Section 14837 of
7 the Government Code.

8 (f) Nothing in this section shall preclude an awarding agency
9 from prequalifying or disqualifying a subcontractor. The
10 disqualification of a subcontractor by an awarding agency does
11 not disqualify an otherwise prequalified contractor.

12 (g) *The Contractors State License Board shall develop and*
13 *maintain a database of contractors and subcontractors that are*
14 *qualified to bid on a public works project that may be accessed*
15 *by public entities subject to this part.*

16 SEC. 2. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.